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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/848,988

05/04/2001

Christina Bauer-Plank

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8753

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UNILEVER INTELLECTUAL PROPERTY GROUP

700 SYLVAN AVENUE,

BLDG C2 SOUTH

ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/848,988	Applicant(s) BAUER-PLANK ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7, 9-12, 14 and 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,517,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is not seen that there is a patentable distinction between a pourable emulsion and a squeezable one.

Applicant has indicated his intent to file a terminal disclaimer but has not submitted one with the present response.

Applicant has provided evidence in this file showing that the invention was owned by, or subject to an obligation of assignment to, the same entity as the Bauer-Plank patent at the time this invention was made.

Accordingly, Bauer-Plank is disqualified as prior art through 35 U.S.C. 102(e), (f) or (g) in any rejection under 35 U.S.C. 103(a) in this application. However, this applied art additionally qualifies as prior art under another subsection of 35 U.S.C. 102 and accordingly is not disqualified as prior art under 35 U.S.C. 103(a).

Applicant may overcome the applied art either by a showing under 37 CFR 1.132 that the invention disclosed therein was derived from the inventor of this application, and is therefore, not the invention "by another", or by antedating the applied art under 37 CFR 1.131.

Claims 1-12, 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer-Plank (6,517,884) and of record.

Bauer-Plank (6,517,884) discloses a water and oil emulsion that has anti-spattering agents and contains no native soy lecithin. Citric acid esters are used as emulsifiers in this product. The claims appear to differ from the

reference in the suggestion of the Boswick value but Bauer-Plank suggests that this value indicates that the product is squeezable and pourable. Thus it would have been obvious to one having ordinary skill in the art to utilize the product of Bauer-Plank as the pourable frying composition and process of the claims.

The rejections of the claims over Asahi, Gunsted and Madsen has been withdrawn in response to applicants' amendments to the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda (JP 10-113145 PAJ with translation) .

Ikeda discloses treating pan-fried seasoning that is added to a wok or a frying pan to season the foods while heating. The product reduces splashing of fat, oil and moisture during cooking. The composition is a water continuous or an o/w emulsion containing 10-50% oil, 0.03-0.3 wt% emulsifier having an HLB of greater than or equal to 7, a viscosity of 1000-

7000 centipoises at 20 C and an average oil drop particle size of less than or equal to 30 um. The selected emulsifiers include organic acid monoglyceride (claim 2) or monoglyceride citrate (page 12 in paragraph 0016). Salt is included as a seasoning in paragraph 0012.

Claim 1 appears to differ from the reference in the recitation of the specific Bostwick value of the product but the Bostwick value is known in the art, as disclosed in applicants' specification at page 13, lines 8-9 to be a measure of how pourable the composition is. Since the composition of Ikeda is used as a seasoning for pan-frying or stir-frying made from liquids, one of ordinary skill in the art would have expected it to be pourable. It is appreciated that the pH of the composition is not mentioned but the pH range selected is a range typically found in foods.

Claim 1 also appears to differ from the reference in the recitation of the use of a mixture of citric monoglyceride and diglycerides. Ikeda discloses diglycerides as emulsifiers. Even though citric diglycerides are not mentioned, it would have been obvious to expect citric diglycerides to be emulsifiers useful in the composition of the claims. It is appreciated that the chain length and extent of saturation is not mentioned for the citric acid monoglyceride but no unobvious or unexpected result is seen from the

selection of these particular features. Natural fat sources are known to possess chain lengths like that of claim 11 and saturated fatty acids are well known in the art.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1700, art unit 1794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

Application/Control
Number: 09/848,988
Art Unit: 1794

Page 7

access to the Private PAIR system, contact the Electronic Business Center
(EBC) at 866-217-9197 (toll-free).

Carolyn Paden

CAROLYN PADEN 11-28-07
PRIMARY EXAMINER 1794